IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.913 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not ?

3 Whether Their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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VASIM AHMED JAHIDALI ANSARI - Appellant

Versus

STATE OF GUJARAT - Respondent

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Appearance :
MRS SHILPA R SHAH for Appellant.
MR KT DAVE, APP for Respondent.
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 27/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against judgment dated September 15, 2000 rendered by the learned

Additional City Sessions Judge, Court No.18, Ahmedabad, in Sessions Case No.216 of 1998 by which the appellant is convicted for commission of offences punishable under Sections 489B and 489C of the Indian Penal Code ("IPC" for short) and sentenced to suffer R.I. for ten years and fine of Rs.50,000/-, in default S.I. for two years, for commission of offence punishable under Section 489B IPC as well as R.I. for seven years and fine of Rs.50,000/-, in default S.I. for one year, for commission of offence punishable under Section 489C IPC.

2. The facts emerging from the record of the case are as under:

The appellant's maternal uncle named Aainul Hak Abdul Satar Ansari had availed of loan from Relief Road Branch of Bombay Mercantile Cooperative Bank Limited for purchase of a truck. From the income derived by operating the truck, the maternal uncle of the appellant used to deposit the amount in his Savings Bank Account No.27773, which he was operating with the bank. The appellant, who is nephew of Aainul Hak Abdul Satar, used to go to bank and deposit the amount in the Savings Bank Account of his maternal uncle given by his maternal uncle. On July 4, 1998, at about 11.00 A.M., the appellant went to Relief

Road Branch of the Bombay Mercantile Cooperative Bank Limited, Ahmedabad, to deposit a sum of Rs.19,200=00 in the account of his maternal uncle. He handed over the cash to Cashier Shabbirbhai Abdul Husain Jariwala. The Cashier counted the notes and while counting the notes, he noticed that two currency notes each of Rs.100=00 denomination bearing Nos. GBK 713227 and GBK 713219 were counterfeit. Thereupon, Mr.Jariwala pointed out to the appellant that amongst the notes presented by him for depositing in the credit of Savings Account of his maternal uncle, two notes were counterfeit. However, the appellant insisted that those two notes were neither forged nor counterfeit and were genuine. Therefore, Cashier Mr.Jariwala took the appellant before Mr.Mohmed Ibrahim Haji Adam Memon, who was then discharging duties as Assistant Manager in the Bank. The Assistant Manager also examined the two notes and found that they were counterfeit. The Assistant Manager ascertained the name of the appellant and, thereafter, informed him that the two counterfeit notes should be torn into two pieces, out of which one would be given to the appellant and other would be retained by the bank to be forwarded to the expert for the purpose of ascertaining whether the notes were counterfeit. The appellant insisted that the notes

presented by him before the Cashier were not counterfeit at all and asked the Assistant Manager to file police complaint against him if it was thought fit to do so. The Assistant Manager, therefore, telephoned PSO of Kalupur Police Station. On the basis of information conveyed by the Assistant Manager on phone, Mr.D.B.Bodat Second PSI discharging duties in Investigation Squad of Kalupur Police Station, was deputed to Bombay Mercantile Cooperative Bank Limited. Mr.Memon, who was Assistant Manager, lodged his complaint against the appellant. The complaint lodged by Mr.Memon was forwarded to Kalupur Police Station for registration of offences. On the basis of the complaint of the Assistant Manager, offences punishable under Sections 489B and 489C IPC were registered against the appellant. During the course of investigation, two counterfeit notes were seized under a panchnama and forwarded to expert for opinion as to whether those notes were counterfeit. The appellant was arrested and panchnama of place of incident was prepared by PSI Mr.Bodat. Further investigation into the case was carried out by Mr.Pankajkumar Pranshanker Bhatt, who was then Second Police Sub Inspector of Kalupur Police Station. He recorded statements of those persons who were found to be conversant with the facts of the case.

On conclusion of the investigation, Police Inspector Mr.P.J.Chavda submitted charge-sheet against the appellant for commission of offences punishable under Sections 489B and 489C IPC in the Court of learned Metropolitan Magistrate, Ahmedabad.

3. As the offences punishable under Sections 489B and 489C IPC are exclusively triable by a Court of Sessions, the case was committed to City Sessions Court, Ahmedabad, for trail, where it was numbered as Sessions Case No.216 of 1998. The learned Additional City Sessions Judge, Court No.23, to whom the case was made over for trial, framed necessary charge against the appellant at Exh.2. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) Assistant Manager of Bombay Mercantile Cooperative Bank Limited Mr.Mohmed Ibrahim Haji Memon as P.W.-1 at Exh.6; (2) Cashier of the bank Mr.Shabbirbhai Abdul Husain Jariwala as P.W.-2 at Exh.16; (3) panch Morlidhar Asandas Keshnani as P.W.-3 at Exh.17; (4) Head Cashier of the bank Mr.Chandrakantbhai Keshavlal Patel as P.W.-4 at Exh.19; (5) Rameshkumar N. Savaye, who was then serving in mint as P.W.-5 at Exh.21; (6) PSI of Kalupur Police Station Mr.Dhanjibhai B. Bodat

as P.W.-6 at Exh.23; (7) another PSI of Kalupur Police Station, Mr.Pankajkumar P. Bhatt as P.W.-7 at Exh.27; and, (8) PI Mr.Pakubha Jamubhai Chavda as P.W.-8 at Exh.28 to prove its case against the appellant. The prosecution also produced documentary evidence such as; copies of receipts issued by the bank for having received amounts with reference to Savings Bank Account No.27773 at Exhs.8 to 15; panchnama of place of incident at Exh.18; panchnama of person of the appellant and seizure of currency notes from him prepared at the time of his arrest at Exh.20; report of examination of suspected bank notes at Exh.22; panchnama indicating that two currency notes each of Rs.100=00 denomination bearing Nos. GBK 713219 and GBK 713227 were seized and sealed at Exh.25; letter to the General Manager, Currency Note Press, from Police Inspector, Kalupur Police Station, requesting to examine the notes and verify whether they were counterfeit at Exh.26; etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge of the trial Court explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and

recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant stated that he was sent to the bank by his maternal uncle to deposit the amount in his Savings Account, but was innocent. However, he did not lead any evidence in support of his claim advanced by him in his further statement.

5. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that currency notes, which were found in possession of the appellant, were forged and/or counterfeit currency notes. According to the learned Judge, it was proved by the prosecution beyond reasonable doubt that the appellant had submitted those forged and/or counterfeit currency notes knowingly or having reason to believe the same to be forged or counterfeit and used them as genuine currency notes by depositing the amount in the Savings Bank Account No.27773 and, therefore, he was liable to be convicted for commission of offences punishable under Sections 489B and 489C IPC. In view of abovereferredto conclusions, the learned Judge of the trial Court has convicted the appellant for commission of offences punishable under

Sections 489B and 489C IPC and imposed sentences referred to above by judgment dated September 15, 2000 giving rise to instant appeal.

6. This Court has heard Ms.Shilpa R.Shah, learned counsel of the appellant, and Mr.K.T.Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

7. The record and more particularly receipts produced on record of the case at Exhs.11 to 15 would indicate that on different dates a sum of Rs.19,200=00 was deposited in Savings Bank Account No.27773, which was being operated by the maternal uncle of the appellant. The case of the prosecution is that on July 4, 1998, the appellant had come to the bank to deposit a sum of Rs.19,200=00 in Savings Bank Account No.27773 and handed over the cash to the Cashier, but while counting the notes, it was noticed by the Cashier that two notes, each of Rs.100=00 denomination bearing Nos. GBK 713219 and GBK 713227 were counterfeit notes and, therefore, the

appellant was accordingly informed, who insisted that those two notes were genuine and, therefore, he was produced before the Assistant Manager and ultimately the prosecution was launched against him. Thus, the case of the prosecution is that the appellant was in possession of two counterfeit notes each of Rs.100=00 denomination bearing Nos. GBK 713219 & GBK 713227. As per the prosecution case, the counterfeit notes were seized and sent to expert for his opinion. The report of the expert is produced by the prosecution on record of the case at Exh.22. It indicates that the two notes, each of Rs.100=00 denomination, bearing Nos. I BK 713227 and I BK 713219 were examined by the expert and were found to be counterfeit. Thus, the notes, which were seized from the possession of the appellant, were never sent to the expert to obtain the report of examination of suspected bank notes. The prosecution has failed to explain discrepancy in numbers of notes seized and numbers of notes examined by the expert. This discrepancy is vital and goes to the root of the case. As the prosecution has failed to establish that the appellant was in possession of the counterfeit notes on July 4, 1998, he is entitled to be acquitted on this count alone.

8. Further, from the testimony of the Cashier read

with that of the Assistant Manager, it is evident that the appellant used to deposit the amount in the bank account, which was being operated by his maternal uncle. Accordingly, on July 4, 1998, he had gone to the bank to deposit the said amount. Though it was pointed out to the appellant that the two notes were counterfeit, it was maintained by him before the Cashier and the Assistant Manager of the bank that they were genuine. There is no evidence on record to suggest that after knowing that those two notes were counterfeit, any attempt was made by the appellant to use them as genuine. One of the vital ingredients of Sections 489B and 489C IPC is that currency notes must be of such nature that a mere look at them would convince anybody that they are counterfeit. However, as admitted by Assistant Manager Mr.Memon in paragraph 5 of his deposition and Cashier Mr.Jariwala in paragraph 3 of his deposition it was not possible by the appellant to convince him that the two notes were counterfeit. The presumption that the appellant knew that the notes in his possession were counterfeit cannot be drawn. As observed earlier, after the appellant was informed that the two notes were counterfeit, no attempt was made by him at all to use them as genuine. Under the circumstances, it is difficult to conclude that the appellant committed offences punishable under Sections

489B and 489C IPC. On the facts and in the circumstances of the case, it is not possible for this Court to sustain the conviction of the appellant and, therefore, the appeal will have to be allowed.

For the foregoing reasons, the appeal succeeds. Judgment dated September 15, 2000 rendered by the learned Additional City Session Judge, Court No.18, Ahmedabad, in Sessions Case No.216 of 1998 convicting the appellant under Sections 489B and 489C IPC and sentencing him to suffer R.I. for ten years and fine of Rs.50,000/-, in default S.I. for two years, for commission of offence punishable under Section 489B IPC as well as R.I. for seven years and fine of Rs.50,000/-, in default S.I. for one year, for commission of offence punishable under Section 489C IPC, is hereby set aside. Instead, he is acquitted. The appellant is on bail pursuant order dated October 6, 2000 passed by the Division Bench comprising K.R.Vyas & J.R.Vora, JJ. in instant appeal. Therefore, the bail bonds are cancelled and the sureties are discharged. It is not necessary for the appellant to undergo any sentence and that he shall present himself before the Jail Authorities for completing certain formalities. The appeal is accordingly allowed. *Muddamal* be disposed of in terms of directions given by the

learned Judge of the trial Court in the impugned judgment.

[J.M.PANCHAL, J.]

[H.B.ANTANI, J.]

Rajendra